

## IN THE SUPREME COURT OF THE STATE OF NEVADA

The State of Nevada ex rel  
Juan Launiza,

v.

The Justice Court of Carson Town-  
ship.Samuel Platt, Atty. for Petitioner  
Alfred Chantz, Atty. for Respondent.Writ of Certiorari  
DECISION

Martha H. Blackwell brought suit in the Justice Court of Carson Township against Juan Launiza claiming damages for the herding of sheep on lands alleged to be owned and possessed by her and her assignors. The affidavit of relator's attorney filed in this Court states that by oral answer defendant entered a general denial to the allegations of the complaint, but the record as certified by the Justice of the Peace fails to show that there was any answer, either oral or written, verified or unverified, questioning plaintiff's title to the lands. She recovered a verdict and judgment for \$75 and for costs and attorney's fees. Patents, state contracts and deeds introduced in evidence by her on trial indicated that she was the owner of several hundred acres of land but there was a deed to her from Clara Sweeney, given three years previously for eighty acres for which the latter was not shown to have any patent, contract right or title. It appears from the record that the defendant in that action, who is the relator here, testified that so far as he knew the title to the lands was in the plaintiff and that he was not aware of any omission in her title.

Defendant's counsel was sworn as a witness and stated that from an examination of the documentary evidence it was apparent that plaintiff did not have a title to all the lands. Thereupon the attorney for the defendant renewed a motion to certify the case to the district court for trial upon the ground that the title to real property was necessarily involved in the determination of the action and that the Justice Court had no jurisdiction under Sec. 3343 of the Compiled Laws.

The proceeding here is brought to review the action of the Justice Court in refusing to certify the case to the district court for trial and the question for determination is whether the title to real property was necessarily involved so as to deprive the Justice Court of jurisdiction.

Sec. 8 of Article 6 of the Constitution of the State of Nevada provides that the Justice Court shall not have jurisdiction "in cases wherein the title to real estate or mining claims, or questions of boundaries to lands are involved," and Sec. 3343 of the Compiled Laws:

"The parties shall not be at liberty to give evidence upon any question which involves the title to, or the right of possession to, or the possession of, real property or mining claims, or upon any question involving boundaries to land, or the legality of any tax, impost, assessment, toll or municipal fine nor shall any issue presenting such question be tried by the Justice Court and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve either of such questions, the Justice shall suspend all further proceedings in the action, and certify the pleadings, or if the pleadings be oral, a transcript of the same from his docket to the District Court for the county; and from the time of filing such pleadings or transcript with the clerk of the District Court, such district court shall have over the action the same jurisdiction as if it was originally commenced therein."

It is not pretended that a verified answer was filed and the affidavit is insufficient to show that there was an oral answer questioning plaintiff's right to the lands, for the proceedings in the lower court are required to be established by the record as certified. *Alexander v. Archer*, 21 Nev. 22.

We need not determine whether in the absence of an issue raised by answer, verified or unverified evidence could be introduced on the trial to show a conflict in regard to the title. It is sufficient for the purposes of this case to say that it could be so introduced and considered, the evidence submitted did not show that the right to real property was necessarily involved. There was a failure to prove that the plaintiff and her grantor had the patent right to this particular eighty acres, but it is not shown that she did not have a prior possession which would have raised sufficient presumption of her ownership in the absence of patents and

deeds. Nor does it appear whether the trespass was committed on all the lands claimed by the plaintiff, or only on lands other than this eighty acres, which would not necessarily involve the title to the latter.

If evidence may be considered for any purpose when no issue is properly shown, we may distinguish between absence of proof and conflict in evidence, and conclude that the failure of the plaintiff to prove ownership by patent to part or all the evidence of her right by patent, land, did not make it necessary to have the case certified to the district court. If she had failed to introduce deed, prior possession or otherwise, to any part of the land the Justice Court would still have had jurisdiction to enter judgment in favor of

the defendant for costs. If she did not prove ownership by prior possession when she had not connected herself with the patent right, then there was no proof that the land belonged to her, and there being none that it belonged to anyone else, such failure of proof did not raise any conflict in the evidence, and did not show that the title was necessarily involved when the defendant, as a witness, made no claim to the land nor contention that it belonged to any third person, and his conduct and testimony were more nearly tantamount to an admission that plaintiff was the owner.

The defendant's attorney did not testify to any new facts, but in regard to his opinion as to whether the evidence required the certification of

the case, a matter of law for the court.

Oregon Short Line R. Co. v. District Court, 85 p. 3623 and cases there cited, are instructive regarding the proposition here involved.

It is ordered that the writ be dismissed, and that the papers certified from the Justice Court be returned to that tribunal.

Talbot, J.

I concur:

Fitzgerald, C. J.

I concur in the order dismissing the writ. If the transcript of the Justice's docket had shown that an oral answer had been filed denying plaintiff's allegations of ownership or right of possession, then in my judgment, it would have appeared that an issue was raised requiring proof upon the part of plaintiff to establish her allegations of title or right of possession, and such proof the Justice, under the provision of the statute would not have jurisdiction to hear. His duty would have been to have certified the case to the District Court. (*Kutner vs. Goldstein Co.*, 135 Cal 65) While the justice did hear testimony upon the question of title, I think it was improper for him to have done so, and such action might have been sufficient to have supported a conclusion that the title or right of possession of real property was involved in the action, did not the testimony of the defendant, partially conceding plaintiff's title, negative such a conclusion.

Norrross, J.

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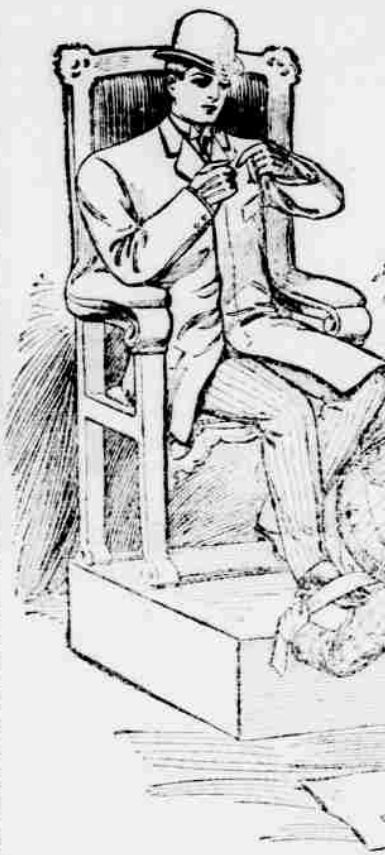
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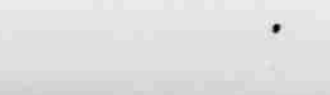
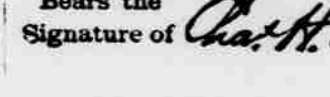
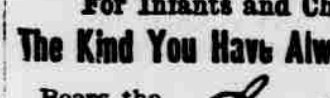
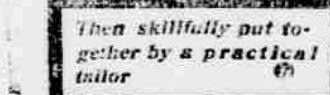
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